

Remarks

The Office communication mailed September 1, 2004 stated that the Amendment filed on June 10, 2004 does not comply with the requirements of 37 CFR 1.121(c) because the identifier “(previously presented)” indicated for claims 2-10, 12-15, and 17-20 is incorrect. The Office communication stated that the identifier “(original)” is the correct identifier for these claims. The listing of claims in the present Amendment now identifies claims 2-10, 12-15, and 17-20 as “(original)”. All other substantive portions of this Amendment are identical to the previous Amendment filed on June 10, 2004.

Claims 1-21 are pending in the application. Claims 1, 11 and 16 are amended, and claim 21 is canceled. The rejections of Claims 1-20 are respectfully traversed below.

A. Claims 1-3, 5 and 7 Are Novel

Claims 1-3, 5, and 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,086,543 to **Mitchell**. Claim 1 has been amended to include the limitation: “the resilient band includes a stretchable portion and a non-stretchable portion, and the stretchable portion is longer than the non-stretchable portion.” Accordingly, Claims 1-3, 5 and 7 now recite a retainer strap with a stretchable portion that comprises more than about fifty percent of the total length of the strap. As explained in Applicant’s specification, the “band 12 is desirably constructed of a highly elastic, stretchable material,” and “the attachment loop portion 14 can be stretched such that an article is resiliently and firmly secured on the base object 30 by the loop 14.” (page 5, lines 6-7; page 7, lines 13-15). As shown in Figures 1 and 2 of the application, the stretchable mounting loop portion 13 comprises at least about fifty percent of the total length of the strap 10.

Mitchell, on the other hand, describes a strap wherein a non-stretchable and inelastic loop portion 16 (e.g. conventional Velcro® loop material) “extends inwardly along band 10 from end 18 thereof to a first termination point 20 that is substantially intermediate the ends 18 and 22 of

band 10." Even if the band 10 of **Mitchell** is constructed of a stretchable and resilient material, the non-stretchable and inelastic loop portion 16 affixed to the band 10 prevents the wrapping device from having a stretchable portion that comprises more than about fifty percent of the length of the device. Furthermore, the non-stretchable and inelastic hook portions 12 and 14 (e.g. conventional Velcro® hook material) affixed to band 10 further reduce any stretchable portion to much less than fifty percent of the length of the **Mitchell** wrapping device. In other words, any "stretchable portion" of the **Mitchell** device must only include those portions of the band 10 that lie between loop portion 16 and hook portion 14, and between hook portion 14 and hook portion 12. As is evident in Figures 1-3 of **Mitchell**, these stretchable portions comprise much less than fifty percent of the total length of the device. Therefore, **Mitchell** does not anticipate Claims 1-3, 5 and 7 because **Mitchell** does not disclose every element recited in independent Claim 1, and the rejections of claims 1-3, 5 and 7 should be withdrawn.

**B. Claims 4, 6, and 8-20 are Not Unpatentable As the Office Action
Has Not Made Out a Prima Facie Case of Obviousness**

The Examiner has the burden to establish a prima facie case of obviousness when rejecting claims under 35 U.S.C. §103(a). *See* MPEP 2142. To establish a prima facie case of obviousness, three basic criteria must be met. *See* MPEP 2143. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *See Id.* Indeed, the proposed modification cannot render the prior art unsatisfactory for its intended purpose and cannot change the principle of operation of a reference. *See* MPEP 2143.01. Second, there must be a reasonable expectation of success. *See* MPEP 2143. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See Id.* The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *See Id.* (citing *In re Vaeck*, 947 F.2d 488, 20USPQ2d 1438 (Fed. Cir. 1991)).

1. Claims 4, 6, 16-19 and 21 are Patentable Over Mitchell in View Hasslinger

Claims 4, 6, 16-19 and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over **Mitchell** in view of U.S. Patent No. 4,088,136 to **Hasslinger et al.** The Office action states that it would have been obvious to modify the retainer strap of **Mitchell** so that the loop material substantially covers the face of the strap in view of **Hasslinger**.

Claim 21 has been cancelled. Claims 4 and 6 depend from amended Claim 1, and therefore include every limitation of Claim 1. As discussed above regarding claim 1, **Mitchell** does not disclose, and actually teaches away from, a retainer strap with a stretchable portion that comprises more than about fifty percent of the total length of the strap. Independent Claim 16 and dependent Claims 17-19 similarly require an elastic strap that is "stretchable over more than about fifty percent of its length." Accordingly, even if the proposed combination of **Mitchell** and **Hasslinger** is proper (which the Applicant does not hereby admit), the modification to **Mitchell** does not include every element recited in claims 4, 6, and 16-19. Furthermore, extending the non-stretchable and inelastic loop portion 16 of **Mitchell** to cover the entire length of band 10 will actually reduce or even eliminate any stretchable portion of the **Mitchell** device. Accordingly, the rejection should be withdrawn. In addition, the Office Action does not identify any teaching or suggestion in the references for the proposed modification to **Mitchell**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. Absent such a teaching or suggestion, the rejection is improper, and should be withdrawn.

2. Claims 8-10 are Patentable Over Mitchell in View of Antaki

Claims 8-10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over **Mitchell** in view of U.S. Patent No. 5,752,633 to **Antaki**. The Office Action states that it would have been obvious to modify the retainer strap of **Mitchell** to be stretchable by at least 30 percent as suggested by **Antaki**.

Claims 8-10 depend from amended Claim 1, and therefore include every limitation of Claim 1. As discussed above regarding claim 1, **Mitchell** does not disclose, and actually teaches away from, a retainer strap with a stretchable portion that comprises more than about fifty percent of the total length of the strap. Accordingly, even if the proposed combination of **Mitchell** and **Antaki** is proper (which the Applicant does not hereby admit), the proposed modification to **Mitchell** does not include every element recited in claims 8-10, and should be withdrawn. In addition, the Office Action does not identify any teaching or suggestion in either reference for the proposed modification to **Mitchell** in view of **Antaki**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. Absent such a teaching or suggestion, the rejection is improper, and should be withdrawn.

3. Claim 20 is Patentable over Mitchell in View of Hasslinger, and Further in View of Antaki

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over **Mitchell** in view of **Hasslinger**, and further in view of **Antaki**. The Office Action states that it would have been obvious to modify the width of the retainer strap of **Mitchell** to fall in the range from about 0.5 inch to about 2 inches in view of **Antaki** suggesting a retainer strap structure with a width of two inches.

Claim 20 depends from amended Claim 16, and therefore includes every limitation of Claim 16. As discussed above regarding Claim 16, **Mitchell** does not disclose, and actually teaches away from, an elastic strap that is "stretchable over more than about fifty percent of its length." Accordingly, even if the proposed combination of **Mitchell**, **Hasslinger**, and **Antaki** is proper (which the Applicant does not hereby admit), the modification to **Mitchell** does not include every element recited in claim 20, and should be withdrawn. In addition, the Office Action does not identify any teaching or suggestion in the references for the proposed modification to **Mitchell** in view of **Hasslinger** and further in view of **Antaki**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both

be found in the prior art, not in applicant's disclosure. Absent such a teaching or suggestion, the rejection is improper, and should be withdrawn.

**4. Claims 11 and 13-15 are Patentable Over Mitchell in View of Hasslinger,
and Further in View of Arendt**

Claims 11 and 13-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over **Mitchell** in view of **Hasslinger**, and further in view of U.S. Patent No. 5,259,657 to **Arendt** et al. The Applicant respectfully traverses this rejection.

Similar to independent Claims 1 and 16, amended independent claim 11 recites a strap including an elastic mounting loop that is fully stretchable over its length and comprises "more than about fifty percent of the total length" of the strap. As discussed above, **Mitchell** does not disclose, and actually teaches away from, a retainer strap with a stretchable portion that comprises at least about fifty percent of the total length of the strap. Accordingly, even if the proposed combination of **Mitchell**, **Hasslinger**, and **Arendt** is proper (which the Applicant does not hereby admit), the proposed modification to **Mitchell** does not include every element recited in claims 11 and 13-15 and should be withdrawn. In addition, the Office Action does not identify any teaching or suggestion in the references for the proposed modification to **Mitchell** in view of **Hasslinger**, and further in view of **Arendt**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. Absent such a teaching or suggestion, the rejection is improper, and should be withdrawn.

**5. Claim 12 is Patentable over Mitchell in View of Hasslinger and Arendt,
And Further in View of Antaki**

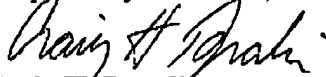
Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over **Mitchell** in view of **Hasslinger** and **Arendt**, and further in view of **Antaki**. The Applicant respectfully traverses this rejection.

Claim 12 depends from independent claim 11, and like amended claim 11, recites a strap including an elastic mounting loop that is fully stretchable over its length and comprises "more than about fifty percent of the total length" of the strap. Again, **Mitchell** does not disclose, and actually teaches away from, a retainer strap with a stretchable portion that comprises at least about fifty percent of the total length of the strap. Accordingly, even if the proposed combination of **Mitchell**, **Hasslinger**, **Arendt** and **Antaki** is proper (which the Applicant does not hereby admit), the proposed modification to **Mitchell** does not include every element recited in claim 12, and the rejection should be withdrawn. In addition, the Office Action does not identify any teaching or suggestion in the references for the proposed modification to **Mitchell** in view of **Hasslinger** and **Arendt**, and further in view of **Antaki**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. Absent such a teaching or suggestion, the rejection is improper, and should be withdrawn.

Conclusion

Applicant believes this case is now in condition for the immediate allowance of Claims 1-20, and such action is respectfully requested. If any issue remains unresolved, however, Applicant's attorney welcomes the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,


Craig H. Popalis
Registration No. 49,028

Womble, Carlyle, Sandridge, & Rice PLLC
P.O. Box 7037
Atlanta, GA 30357-0037
(336) 574-8099

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